

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

LAWRENCE & MEMORIAL HOSPITAL

Employer

and

CONNECTICUT FEDERATION OF EDUCATIONAL
AND PROFESSIONAL EMPLOYEES/FEDERATION
OF NURSES & HEALTH PROFESSIONALS/LOCAL
5051, FNHP/AFT

Petitioner

Case No. 34-RC-1897

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, which operates a hospital in New London, Connecticut and "off-site" facilities in Groton and East Lyme, Connecticut, is a not-for-profit Connecticut corporation providing acute health care community services. Since 1983 the Petitioner has represented the Employer's 200 licensed practical nurses (LPNs) and technicians in a unit of technical employees.¹ The parties' current labor agreement covering these employees is effective from November 16, 1998, to November 16, 2001. The Petitioner seeks a "self-determination" election to add non-invasive cardiology technicians and biomedical technicians to that unit. The Employer opposes their inclusion, claiming that the biomedical technicians are skilled maintenance employees and that none of the petitioned-for employees are technical employees. Although the Petitioner also represents a unit composed of the Employer's 400 registered nurses, none of the Employer's other 1500 employees are represented.

The Non-Invasive Cardiology Technicians

As of the close of the hearing the Employer employed 3 full-time and 3 "per diem" non-invasive cardiology technicians (hereinafter also referred to as cardiology techs).² These employees work with various unit technical employees in the Cardiopulmonary Services Department under the supervision of the Manager of Noninvasive Cardiopulmonary Services. For approximately 20 years before 1983, the Employer employed an undisclosed number of EKG technicians (hereinafter also referred to as EKG techs). Neither the description of the LPN technical unit, nor the parties' agreement covering that unit includes EKG techs. The agreement specifically excludes per diem employees and their status is not at issue herein. Commencing in 1983, the Employer began to add certain nurses' responsibilities to those of the EKG techs. As a result of these changes the EKG

¹ Although not specifically defined as a unit of technical employees, both parties have described the unit as such, and it is composed of classifications that the Board traditionally finds to be technical.

² A fourth full-time position was scheduled to be filled on June 1, 2001.

tech position has evolved into the current position of cardiology tech, and the Employer now only employs one "per diem" EKG tech.

The cardiology techs' duties and responsibilities involve preparing patients for, and administering, the following medical procedures: KG tests, Holter and other event monitoring tests, stress and nuclear tests, and vascular tests. All but vascular testing, which is still also performed by nurses, requires the use of an EKG monitor and requires EKG knowledge and training. It is undisputed that in performing their duties the cardiology techs spend between 85 and 90 percent of their time in direct contact with patients.

Although the cardiology techs are not required to be licensed or registered by the State of Connecticut, the record clearly indicates that the Employer requires all incumbents to be independently certified in cardiology within a year. The record further indicates that the Employer requires all incumbents to be certified in basic life support (BLS) and advanced cardiac life support (ACLS).

The record also clearly indicates that cardiology techs are required to initially interpret the results of the tests that they administer. In this regard, the record indicates that these tests results are "outsourced" for interpretation and then returned to the Employer to be "re-read" by cardiologists. Although the Employer's Manager of Noninvasive Cardiopulmonary Services testified and that the cardiology techs only "read" and "identify" test results, the job description for the position clearly requires that the incumbents be trained in the "[s]uccessful completion of EKG interpretation... ." Moreover, one of the cardiology techs subsequently testified, without contradiction, that the cardiology techs' initially interpret tests results to determine if they are "normal" or "abnormal." She also testified without contradiction, that the cardiology techs could cancel tests that they believe to be incorrect or incapable of being properly administered.

The Biomedical Technicians

The Employer employs one biomedical technician manager (whose unit placement is not in issue) and 4 biomedical technicians (hereinafter also referred to as biomed techs) in the Engineering Department. The record indicates that the

position of biomed tech has existed for at least 17 years. Also employed in the Engineering Department, which is responsible for maintaining all of the Employer's clinical and non-clinical equipment, are various unrepresented licensed and non-licensed trades people including plumbers, electricians, electronic technicians, and heating air-conditioning and ventilation technicians. Although all Engineering Department employees are under the supervision of the Director of Engineering, the record indicates that the biomed techs have separate budgets for costs and payroll.

The biomed techs' duties and responsibilities involve the calibration, preventive maintenance and repair of medical equipment, including equipment that is considered a "high risk" to patients should it fail to perform correctly. Although their work results in regular contact with unit technical employees and almost daily contact with patients, it is clear from the record that the biomed techs are not directly involved in patient care.

Biomed techs are required to have 5 years of technical experience and proficiency in reading and interpreting schematics and specifications, and 5 years of working knowledge of the biomedical profession. They are also expected to undergo various in-house and vendor-sponsored training. Although the record further indicates that both an associate's degree in biomedical or electrical engineering, and certification in clinical engineering and biomedical technology are "preferred," it is clear that neither is required.

Findings and Conclusions

It is well established, and not disputed herein, that a self determination election is appropriate where an incumbent union seeks to represent employees residual to those in its existing unit. To do so here, in the context of an acute health care institution where the Petitioner currently represents a technical unit, the Petitioner must establish that the petitioned-for employees are technical employees as defined by the Board. Collective Bargaining Units in the Health Care Industry, 284 NLRB 1515, 1553-1556; 29 CFR Part 103; *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975).

With regard to the non-invasive cardiology technicians, as the Employer correctly notes, some of their duties are also typically performed by EKG technicians and monitor technicians whom the Board has found not to be technical employees. However, for the reasons indicated below, I find those cases to be distinguishable, and that the cardiology technicians' work is of a technical nature requiring the use of independent judgement and specialized training. In this regard, I note particularly that they evaluate the condition of patients prior to and during the tests, that they preliminarily read and interpret test results to discover abnormalities, and that they are required to be certified in 3 areas. *Mercy Health Services North*, 311 NLRB 1091, 1992 (renal dialysis technician) (1993); *Southern Maryland Hospital Center, Inc.*, 274 NLRB 1470, 1476 (EEG technicians) (1985). Accordingly, I shall grant the Petitioner's request and allow the full-time non-invasive cardiology technicians to determine if they want to be represented by the Petitioner in its existing technical unit, or remain unrepresented.

With regard to the biomedical technicians, contrary to the Petitioner, I find that their training, duties and responsibilities, are virtually identical to other biomedical technicians and technologists found by the Board to be skilled maintenance employees. *The Toledo Hospital*, 312 NLRB 652 (1993); *Mercy Health Services North*, supra at 1473-1474; *San Juan Medical Center*, 307 NLRM 117 (1992). Accordingly, I find that the biomedical technicians are not technical employees, and I shall partially grant the Employer's post-hearing motion and dismiss the petition as to these employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees found appropriate at the time and place set forth in the notices of election to be issued subsequently. Eligible to vote are those employees who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before

the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by the Petitioner. More specifically, if a majority of valid ballots are cast for representation, they will be taken to have indicated the employees' desire to be included in the existing unit of LPNs and technicians currently represented by Connecticut Federation of Educational and Professional Employees/Federation of Nurses & Health Professionals/Local 5051, FNHP/AFT. If a majority of valid ballots are cast against representation, they will be taken to have indicated the employees' desire to remain unrepresented.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before June 20, 2001. No extension of time to file these lists shall be granted except in extraordinary circumstances.

Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 27, 2001.

Dated at Hartford, Connecticut this 13th day of June, 2001.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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